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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/487,383	01/18/2000	Michael R. Bedford	68019	3100

7055 7590 06/18/2003

GREENBLUM & BERNSTEIN, P.L.C.  
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RESTON, VA 20191

EXAMINER

MELLER, MICHAEL V

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 06/18/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/487,383

Applicant(s)

BEDFORD ET AL.

Examiner

Michael V. Meller

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 May 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 30-60 is/are pending in the application.
- 4a) Of the above claim(s) 44-60 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 28.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 30-43, drawn to a method of using a xylanase, classified in class 435, subclass various.
- II. Claims 44-60, drawn to a method of using a cellulase (beta-glucanase), classified in class 514, subclass various.

The inventions are distinct, each from the other because of the following reasons:

The two inventions are materially distinct since they uses totally different enzymes in their process. The actions of a xylanase and that of a cellulase are completely different. Thus, the inventions differ in effects and modes of operation of the processes.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Arnold Turk on 6/7/2003 a provisional election was made with traverse to prosecute the invention of Group I, claims 30-43. Affirmation of this election must be made by applicant in replying to this Office action. Claims 44-60 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 112***

Claims 30-43 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to

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one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

There is no support for the phrase, "in the absence of the xylanase" in claim 30. Xylanase is needed to operate the invention, thus it makes no sense on its face.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 30-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 30, it is not clear what is meant by the phrase, "in the absence of the xylanase.....in the absence of the xylanase", at lines 12-16 of the claim. It is not clear what applicant is trying to claim. It is apparent that applicant intends to claim that the method can use little or no antimicrobial drug, but the absence of xylanase makes no sense since one needs the xylanase to operate the process.

### ***Claim Rejections - 35 USC § 102***

Claims 30-43 are rejected under 35 U.S.C. 102(b) as being anticipated by GB 2,287,867, Bedford et al. ('055), or Bedford et al. ('678).

The references are of record. They do not teach using any antimicrobial. They do teach administering xylanase to chickens.

Claims 30-43 are rejected under 35 U.S.C. 102(e) as being anticipated by Clarkson et al. or Hansen et al.

The references are of record. They do not teach using any antimicrobial. They do teach administering xylanase to chickens.

***Claim Rejections - 35 USC § 103***

Claims 30-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2,287,867, Bedford et al. ('055), Bedford et al. ('678), Clarkson et al. or Hansen et al.

The references are of record. It would have been obvious to use the specific amounts claimed since it is well within the purview of the skilled artisan to optimize the desired results through routine experimentation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 703-308-4230. The examiner can normally be reached on Monday thru Friday: 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on 703-306-3220. The fax phone numbers for the organization where this application or proceeding is assigned are 703-

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308-0294 for regular communications and 703-308-0294 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

A handwritten signature in black ink, appearing to read 'M V Meller', followed by a horizontal line.

Michael V. Meller  
Primary Examiner  
Art Unit 1654

MVM  
June 10, 2003